

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ROBERT J. DOW,)
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Plaintiff)
)
)
v.) Case No. 2:08-cv-00332-SLB
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)
CITY OF ALABASTER, et al.,)
)
)
Defendants)

MEMORANDUM OPINION

This case is before the court on the Report and Recommendation of the Magistrate Judge, (doc. 77), plaintiff's Objections to the Report and Recommendation (doc. 78), and defendants' Objection to and Motion to Strike Plaintiff's Objection to Report and Recommendation, (doc. 79).¹

The court agrees with the findings and conclusions of the magistrate judge that defendants Harmon and Sims were "clearly acting within the scope of their discretionary authority in issuing a citation to [plaintiff] for violating the Alabaster sign ordinance." Doc. 77 at 21. The court also agrees with the finding of the Magistrate Judge that while "the evidence that [defendant] Mayor Frings did

¹ Reference to a document number, ["Doc. ____"], refers to the number assigned to each document as it is filed in the court's record.

anything at all in regard to the issuance of the citation is, to say the least, sparse, it was nonetheless within his discretionary authority as Mayor of Alabaster to see that the city ordinances and laws are carried out.” *Id.* at 22-23.

The court also agrees with the finding of the Report and Recommendation and the law cited in support of the finding that there was no Fourth Amendment violation in the issuing of the citation to the plaintiff and, therefore, there is no violation of Section 1983.

Defendants move to strike certain part of plaintiff's objection to the Magistrate Judge's Report and Recommendation on the grounds that certain arguments made by the plaintiff in his objection are “not accompanied by a citation to evidentiary support or [are] improper evidentiary submissions which are inadmissible.” (Doc. 79 at 2.) Specifically, defendants note that certain arguments made by the plaintiff in his objection to the Report and Recommendation are based on hearsay and have no relevance to the issues before the court. Although defendants' arguments have merit, because consideration of the material sought to be struck does not change the outcome of the court's decision, the court will deny defendants' Motion to Strike as moot.

After careful consideration of the record in this case, the magistrate judge's report and recommendation and the objections thereto, the court hereby **ADOPTS**

the report and the magistrate judge. The court further **ACCEPTS** the recommendations of the magistrate judge that defendants' Motion for Summary Judgment be granted as to Counts One and Seven and that the court decline to exercise supplemental jurisdiction over plaintiff's state law claims and that these claims (Counts Two, Five and Six) be dismissed without prejudice.² Defendants' Motion to Strike will be denied as moot.

DONE, this 31st day of March, 2012

Sharon Lovelace Blackburn

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE

²The court also agrees with the assessment of the Magistrate Judge with regard to the likelihood of success of plaintiff's state law claims. See Report and Recommendation, (doc. 77 at 31-32.)